

**CORRECTED**

**EXHIBIT D**

1  
2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE DISTRICT OF DELAWARE  
4 -- -- --  
5

6 IN RE: ADAMS GOLF, INC. :  
7 SECURITIES LITIGATION :  
8

9 ORAL DEPOSITION  
10 OF  
11 EDWARD NECARSULMER, III  
12 Monday, August 7, 2006  
13 -- -- --

14 Oral deposition of EDWARD NECARSULMER,  
15 III, held at the offices of SIMPSON THACHER &  
16 BARTLETT, LLP, 425 Lexington Avenue, New York,  
17 New York, commencing at 12:08 p.m., reported  
18 by Pamela Harrison, RMR, CRR, CSR and Notary  
19 Public.  
20 -- -- --  
21  
22

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2 variables. Some of the ones you've  
3 mentioned are variables -- are valid  
4 ones, but there are -- just the  
5 existence of the fact that it was a  
6 fast growing company or it was a new  
7 company would not be enough for me to  
8 direct the team to do something  
9 different.

10 BY MR. LEWIS:

11 Q. What variables, if any, would  
12 cause you to direct the team to do something  
13 different in due diligence?

14 MR. GLUCKOW: I'm going to object  
15 to the form and object on the ground  
16 that it's vague and ambiguous and quite  
17 overbroad.

18 But you can answer.

19 THE WITNESS: I mean it's a  
20 situation-by-situation issue. I think  
21 that -- and I can only, you know,  
22 really respond to it anecdotally if I  
23 can think of some appropriate  
24 anecdotes. But I guess my point is,  
25 without belaboring this, is you look at

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2 each situation and hopefully -- you  
3 know, if you are managing the process,  
4 you look at each situation and  
5 hopefully you figure out, you know,  
6 what you need to do to satisfy your  
7 commitment committee, yourself, and the  
8 marketplace. And there are really no  
9 other rules specific -- you know,  
10 templates I can honestly look at you  
11 and offer beyond that.

12 BY MR. LEWIS:

13 Q. Have you ever had the experience  
14 of adjusting the due diligence that you were  
15 conducting on a company because the company had  
16 management that had not had long experience in  
17 running a public company?

18 A. Yes.

19 Q. And why did you do that?

20 A. Well, because simply as a matter  
21 of mechanics. In many cases if a company had  
22 done other offerings or was -- let's say had  
23 done other offerings or had significant -- had  
24 done private equity financings or other  
25 transactions, typically they might be more

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2 organized in terms of your ability to get  
3 documents and things that were on point that  
4 would go right to your organizational outline,  
5 where if they hadn't, you might have to really  
6 help them set up the process.

7 Q. Would you agree that in an  
8 initial public offering there is a strong  
9 affirmative duty of disclosure?

10 MR. GLUCKOW: Object to the  
11 form. Vague and ambiguous. Calls for  
12 a legal conclusion.

13 You can answer.

14 THE WITNESS: Yes.

15 BY MR. LEWIS:

16 Q. Would you agree that in  
17 conducting due diligence it is necessary for the  
18 due diligence team to continue its investigation  
19 of the issuer up to and including the effective  
20 date of the registration statement?

21 A. Yes.

22 Q. And a due diligence  
23 investigation would be inadequate if the  
24 underwriter did not do that?

25 MR. GLUCKOW: Object to the

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2 form. It calls for a legal conclusion.

3 You can answer.

4 THE WITNESS: I mean, the easy  
5 answer is yes, but -- well, okay, let  
6 me just leave it at yes.

7 BY MR. LEWIS:

8 Q. Is it your understanding as a  
9 non-lawyer that one of the duties of  
10 underwriters is to deal fairly with the  
11 investing public?

12 MR. GLUCKOW: Object to the form.

13 You can answer.

14 THE WITNESS: Absolutely.

15 BY MR. LEWIS:

16 Q. Isn't that sometimes referred to  
17 as the shingle theory?

18 A. I'm not familiar with that.

19 Q. I take it from your initial  
20 report that one of your beliefs is that an  
21 underwriter has an obligation to conduct a  
22 reasonable investigation in an IPO?

23 A. Yes.

24 Q. And there is a long tradition  
25 since the securities laws were enacted in the

16 (Pages 58 to 61)

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1 EDWARD NECARSULMER, III  
2 '30s of underwriters conducting due diligence  
3 investigations?

4 MR. GLUCKOW: Object to the  
5 form. Vague and ambiguous.

6 You can answer.

7 THE WITNESS: Yes.

8 BY MR. LEWIS:

9 Q. To your knowledge, how far back  
10 in time have due diligence investigations been  
11 conducted by underwriters?

12 A. I think they were formalized by  
13 the 33 Act, but I don't go back quite that far,  
14 but it's certainly my understanding that  
15 particularly, you know, throughout history, you  
16 know, you committed your own capital to a  
17 greater extent I think than -- now things come  
18 full cycle, but in the beginning I think people  
19 did due diligence as, you know -- it's my  
20 understanding that a lot of due diligence --  
21 what due diligence was done was, in fact, you  
22 know, a matter of, you know, of self-protection  
23 as opposed to any responsibility -- as opposed  
24 to exclusively a responsibility to, you know,  
25 investors.

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2 Q. Did your work in the securities  
3 industry begin in 1967 with Hallgarten?

4 A. Correct.

5 Q. In the time that you've been in  
6 the industry, have you become aware of any  
7 changes in practical standards for due diligence  
8 investigations?

9 MR. GLUCKOW: Objection. Vague  
10 and ambiguous. Overbroad.

11 You can answer.

12 BY MR. LEWIS:

13 Q. Let me reframe the question.

14 Have you become aware of  
15 changes in practice with respect to due  
16 diligence investigations over the time since  
17 1967 that you've been employed in the  
18 industry?

19 MR. GLUCKOW: The same objection.

20 You can answer.

21 THE WITNESS: None to the basic  
22 tenets of how the business or the  
23 process is done. I think one of the  
24 main changes that I've seen is that to  
25 the extent that the managing

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1 EDWARD NECARSULMER, III  
2 underwriter has taken an even larger  
3 responsibility or has been delegated --  
4 I don't like the word delegated, but  
5 has been delegated a responsibility by  
6 the other comanagers to a greater  
7 extent.

8 And the other -- if I can just  
9 illuminate. The process has gotten  
10 better to the extent that investment  
11 banks began to specialize in either  
12 certain industries or had groups that  
13 did certain industries; whereas, in my  
14 life, everybody was a generalist and so  
15 that if you were doing a  
16 telecommunications deal, it would be  
17 done by the telecommunications group in  
18 Lehman Brothers or Goldman Sachs or  
19 something, who really became quite  
20 expert.

21 I know we had a significant  
22 technology practice and management  
23 would often tell me that some of the  
24 people in that group are as  
25 knowledgeable -- not as they were, of

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2 course, but as their competitors were  
3 about the business.

4 MR. GLUCKOW: I think we've been  
5 going a little bit over an hour. If  
6 there's a point in your outline where  
7 we could take a short break.

8 MR. LEWIS: We can take it right  
9 now.

10 MR. GLUCKOW: That would be  
11 great.

12 (A recess was had from 1:18 p.m.  
13 to 1:26 p.m.; and then the proceedings  
14 continued as follows:)

15 BY MR. LEWIS:

16 Q. Mr. Necarsulmer, outside of this  
17 litigation, before you did your work in this  
18 case, did you ever hear it said that  
19 underwriters were required to act as a prudent  
20 man would in the management of his own property?

21 MR. GLUCKOW: Those words?

22 MR. LEWIS: Yes.

23 THE WITNESS: I've certainly  
24 heard of the prudent man rule, but I  
25 thought it referred to trust companies

17 (Pages 62 to 65)

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BY MR. LEWIS:

Q. At the risk of beating the horse dead, again, to your knowledge, is there anyplace in any of the pages referred to in your rebuttal report which touched on gray marketing or Costco distribution?

MR. GLUCKOW: And again, you are focused on the UND production which we have in front of us and 325 and 326, not on deposition testimony?

MR. LEWIS: That is correct.

THE WITNESS: Then I would say -- I was thinking aloud; excuse me. Let me just make sure.

To the best of my knowledge, that is correct.

BY MR. LEWIS:

Q. Moving forward chronologically, I will show you Exhibit 215 which is a Lehman Brothers memorandum, facsimile, suggested outline, and list of concerns. The transmittal date on the fax is July 29, 1998.

Did you review this document?

A. I did see this document.

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Q. And did you see, on the third page of the exhibit, the item "Discounting - Tight Lies have been seen in many Costcos for \$146? How is product getting there? What is Adams Golf doing about it?"

A. I have seen that.

Q. Have you seen any documents that explain to you how that information came into the possession of the underwriters?

A. I had not seen a document documentary of it, no.

Q. Do you recall any testimonial evidence?

A. It is my recollection that either Picchi or Lantier, who were the two Lehman equity research analysts, did refer to this in their deposition testimony. I can't tell you which one. I would say Lantier, if I had to make a determination.

L-A-N-T-I-E-R. P-I-C-C-I, I think. It may be P-I-C-C-H-I.

Q. So that other than the deposition transcripts of the equity analysts, you are unaware of any means by which one could

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determine how the information came into Lehman's possession that caused someone to write the words that appear on the page I read to you?

MR. GLUCKOW: Objection to the form. It mischaracterizes the testimony.

But you can answer.

THE WITNESS: I would add that, you know, since this is post IPO, it's highly plausible that's -- that this came through an investor or type of question to the research analyst.

BY MR. LEWIS:

Q. Can you explain why you say that?

A. Well, what happens often is that as you are talking about the story or the stock, particularly if the stock is, you know, either going up or down a lot and therefore is the subject, research analysts are constantly talking to their customers who are the -- they're counterpart analysts or portfolio managers at usually large financial institutions, or it could be an officer manager

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someplace, and a lot of the process is feedback, and somebody said, you know, what do you think is going on? I heard, you know, from my golf pro or a guy at Fidelity asked me about... I mean, in my experience a lot of the information is actually incoming, so it could very well have come through that way as well.

Q. Let me show you what I've marked previously as 217. This is a teleconference script dated August 5, 1998, sent to Olga Pulido-Crowe and Pat Walravens, W-A-L-R-A-V-E-N-S, from the desk of Patty Walsh. And at Page 40671, you will see a reference, under the heading of Discounting, to "Tight Lies have been seen in many Costcos for \$146. How is the product getting there?" and an answer is given.

Does anything in this document -- strike that.

Do you have any reason to believe that the information that's contained on Page 40670, which is similar to the information we saw in the "concerns" box on Exhibit 215, came as a surprise to the

38 (Pages 146 to 149)